

CLIENT ALERT

German Telecoms Regulator Goes Back to Drawing Board on Competitive Analysis of Wholesale Leased Lines

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The German telecoms regulator (BNetzA) has withdrawn its proposal to the European Commission to divide up the German wholesale leased lines markets according to bandwidth. This is the second time in the last 12 months that the BNetzA has encountered opposition from the Commission in relation to its competitive analysis of telecom markets (previously, the Commission had insisted that it include VDSL in the wholesale broadband access market).

The proposal applied to unmanaged dedicated connections for transmission of voice and data. In early 2006, the BNetzA had conducted an analysis of the markets for wholesale trunk and terminating leased lines and concluded that it would be appropriate to divide service offerings into two categories: (i) up to and including 2 Mbit/s, and (ii) above 2 Mbit/s. A segmentation in this way meant that Deutsche Telekom would have been found to have significant market power only on the wholesale markets for leased lines up to 2 Mbit/s but not above 2 Mbit/s. As a result, regulatory obligations would no longer have been imposed on DT for the higher bandwidth market. In compliance with the EU regulatory framework for consultation on proposed regulatory measures, the BNetzA notified this proposal to the European Commission in August.

Although the Commission has accepted a delineation of the leased lines markets based on bandwidth for certain other countries (notably Greece, Italy, Lithuania, Netherlands and the UK), in almost all these cases, the segments were found not to be competitive. The only exceptions are the UK, where OFCOM found the market for terminating segments above 155 Mbit/s to be competitive and Lithuania, where terminating segments above 2Mbit/s were considered to be an emerging market which should not be regulated.

The Commission's serious doubts regarding BNetzA's findings referred to the lack of a substitution analysis by BNetzA regarding alternative interfaces to traditional leased lines (e.g., Ethernet), the failure to assess separately the market conditions in trunk and terminating segments and, more generally, that BNetzA had not provided sufficient market data to reach its conclusions. Following the Commission's indications of serious doubts about the proposals, the BNetzA has now withdrawn the notification and has indicated that it will seek additional data and will further analyze market developments.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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